

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6494

BILL NUMBER: HB 1144

NOTE PREPARED: Dec 16, 2009

BILL AMENDED:

SUBJECT: Bail.

FIRST AUTHOR: Rep. Frizzell

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: This bill provides that if a person charged with a felony under IC 35-42 (offenses against the person) is admitted to bail, the person: (1) shall be admitted to bail by executing a bail bond with sufficient solvent sureties, depositing cash or securities in an amount equal to the bail, executing a bond secured by certain real estate, or posting a real estate bond; and (2) may not be admitted to bail under the statute that allows admission to bail by executing a bail bond by depositing cash or securities in an amount not less than 10% of the bail.

Effective Date: July 1, 2010.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: *Person Charged with a Felony under IC 35-42 (Offenses Against the Person)* – Defendants who are accused of committing a felony involving a crime against a person would not be able to be released from jail prior to trial if they cannot secure a surety agency who would post bail or pay either a full cash bond or a property bond.

Any effect on county operations will depend on the following factors:

- Each county's jail population and current capacity.
- The current policies that each court with a criminal jurisdiction has concerning pretrial release.
- The number of criminal defendants who are being detained.
- The financial status of the criminal defendants.

County Jail Population – Depending on the number of felony defendants, their residential status, and their ability to pay any additional fees that this bill requires, this bill could increase the number of felony defendants who are held in county jails awaiting trial. The percentage of felony defendants who are unable to pay the higher fees and be required to remain in jail prior to trial is not known. The average cost per day is approximately \$44.

Between CY 2005 and 2007, the Department of Correction (DOC) reports the following information on offenders in county jails: (1) the number of persons in county jails on a one-day count who are a felony offender sentenced to DOC as a felon and serving time in a county jail, (2) the number of offenders sentenced for a misdemeanor, (3) the number of offenders on work release, or (4) the number of defendants awaiting trial.

Using this table, LSA estimates that the number of offenders who are in jail and awaiting trial increased by 8% between 2005 and 2006 and 2% between 2006 and 2007.

Inmates Identified in County Jails by DOC Jail Inspectors						
	CY 2005		CY 2006		CY 2007	
Felony Offenders Under DOC Contract	1,808	11.6%	1,439	9.1%	1,682	10.1%
Sentenced as Misdemeanant	2,755	17.7%	2,563	16.1%	2,749	16.6%
Offenders on Work Release	323	2.1%	409	2.6%	541	3.3%
<i>Criminal Defendants Awaiting Trial</i>	<i>10,991</i>	<i>70.7%</i>	<i>11,889</i>	<i>74.8%</i>	<i>12,172</i>	<i>73.3%</i>
Offenders in County Jails	15,554	100.0%	15,891	100.0%	16,603	100.0%
Source: DOC Annual Inspection of Jails.						

Local Court Rules and Policies – LSA examined the local rules of circuit and superior courts in 20 counties that had posted their pretrial release policies on the Indiana Supreme Court website. The policies that these courts follow vary and the effect that this bill would have on jails in these counties will vary as well. Generally, defendants who are arrested for murder will be detained in jail until the completion of the trial. For Class D felons, counties will allow for pretrial releases either with a reduced bail amount, a 10% cash bond that is deposited with the clerk of court, or with no bail depending on the crime and the defendant's criminal history and ties to the community. As examples, Clay, Delaware, and Elkhart Counties all permit the pretrial release of defendants under the conditions mentioned. In contrast, Johnson County requires bonding by surety agents for all defendants.

Offenders Committed to DOC with Jail Credit – LSA found no data about felony defendants who awaited trial and remained in jail compared to the number of defendants who were released from prison. However, DOC does report whether offenders in DOC facilities received a jail credit while awaiting trial. In CY 2007, 95% of offenders who were convicted of a crime against a person and committed to DOC had a jail term credit, which means that they had been detained in jail prior to trial and later committed to DOC for one or more days. The average length of time that these offenders reported receiving in jail credit ranged from 89 days for Class D felons to 623 days for offenders who were convicted of murder.

DOC Offenders Committed in CY 2008 for Crime Against a Person with Average Jail Credit				
Felony Class	Offenders with Jail Credit	Total Offenders	Percent with Jail Credit	Average Days in Jail
Murder	79	80	99%	623
Felony A	167	168	99%	465
Felony B	715	745	96%	295
Felony C	854	906	94%	174
Felony D	<u>832</u>	<u>915</u>	<u>91%</u>	<u>89</u>
Grand Total	2,647	2,814	94%	

Background on Pre-Release Securities –

Type of Release	Defendant Required To:	Financial Liability for Failure to Appear	Liable Party
Surety Bond	Pay fee (usually 10% of bail amount), plus collateral if required, to commercial bail agent.	Full Bail Amount	Surety Agent
Deposit Bond	Post deposit (usually 10% of bail amount) with court; a portion is refunded when case is completed.		Defendant
Full Cash Bond	Post full bail amount with court.		Defendant
Property Bond	Post property title as collateral with court.		Defendant

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected: Trial Courts; Sheriffs.

Information Sources: Indiana Supreme Court Website, DOC Offender Databases.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.